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BARNES *v.* BARNES' ADM'R.

Jan. 17, 1907.

[56 S. E. 172.]

1. Account, Action on—Evidence—Weight and Sufficiency.—Book accounts shown to have been irregularly and inaccurately kept and failing to disclose known credits are insufficient to support a judgment for the amount shown by them to be due.

2. Bills and Notes—Action—Evidence—Sufficiency.—In an action on a note, evidence held to show that it had been paid.

3. Executors and Administrators—Insolvent Estate—Remedies of Surety of Decedent—Counterclaim.—The debt of a surety to the estate of his deceased principal will not be enforced where the estate is insolvent and the surety is liable as such for a sum largely in excess of the estate's claim against him.

WILLIAMSON et al. *v.* READ et al.

Jan. 17, 1907.

[56 S. E. 174.]

1. Eminent Domain—Award of Compensation—Review.—The report of viewers, fixing the amount of damages allowed to persons whose lands are taken for a public highway under the right of eminent domain, will not be disturbed, unless the record shows clearly that the damage is greater than that fixed, or unless the viewers were governed by wrong principles in assessing damages.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 18, Eminent Domain, § 685.]

2. Same—Measure of Damages—Injury to Property Not Taken—Reduction for Benefits.—The benefits to be considered in reduction of damages to property not taken for the establishment of a public highway, as authorized by Va. Code 1887, § 1078 [Code 1904, p. 510], providing that the viewers shall ascertain the compensation for the land taken and for the damage to the residue, beyond the peculiar benefits to such residue, are confined to such benefits as are direct and peculiar to the owner of the land, as distinguished from those shared in common with other citizens, and the increased value of the land not taken cannot be taken into consideration in fixing the amount of the damages, unless such value is direct and peculiar.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 18, Eminent Domain, § 370.]

3. Same.—In a proceeding to establish a highway through a farm so situated that it had all the outlets to a city and to public roads that any of its uses might require, it appeared that the highway, if opened, would not bring to the farm any road not reached without it, and the only supposed advantage of the proposed highway was

that it would enable the cutting up of the farm into small lots and selling the same at an increased value. The proposed highway would cut the farm in two, leaving about two-thirds of the land on one side of the road and one-third on the other. Held, that no special benefits inured to the farm from the establishment of the highway, and, in estimating the damages by the opening of the highway, no reduction for benefits could be made.

VIRGINIA HOT SPRINGS CO. *v.* GROSE.

Jan. 17, 1907.

[56 S. E. 222.]

Waters and Water Courses—Pollution of Water—Right to Complain.—One purchasing riparian land after the stream has been polluted by sewage and with knowledge of such pollution is not estopped from suing therefor.

BING et al. *v.* BURRUS et al.

Jan. 24, 1907.

[56 S. E. 222.]

1. Wills—Construction—Estates Devised.—Where an estate for life is devised coupled with an absolute power of alienation, express or implied, the devisee takes the fee.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, § 1335.]

2. Same.—Where an estate is devised to one generally, the devisee takes the fee and a limitation over is void.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, §§ 1340-1350.]

3. Same.—A testator directed that real estate should be equally divided between his three sons, and that, if a son desired to sell his part, the preference of purchase should be given to one or both of the other sons at the price obtainable from an outside person, and, if sold to one or both of the sons, they should have time in which to pay the principal in equal installments, and provided that, if any of the sons should die without lawful heir, his part should be equally divided between the others. Held, that the sons took a fee-simple estate.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, § 1344.]

WATTS *v.* COMMONWEALTH.

Jan. 24, 1907.

[56 S. E. 223.]

Licensees—Occupation Tax—Labor Agent—Statutes—Construction.—A person employed by a railway construction company as a